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REPORTS

NOTES OF THE WEEK

A Book About Sentences

It has become a commonplace that the task of deciding sentence or treatment is often far more difficult than that of determining guilt, yet in the past comparatively little attention was devoted to a study of the principles that should govern this matter of sentence. Training and experience in the law are not of themselves qualifications for determining how to deal with offenders; it is easier to ascertain what a court can do than to decide what it ought to do.

Mr. Claud Mullins, who had 15 years' experience as a metropolitan stipendiary magistrate, and has kept alive his interest in the work of the magistrates' courts, and who has thought much about the treatment of offenders, has produced a valuable little book on *The Sentence of the Guilty*,* which we have been glad to publish. Like his earlier books, it is written with that intimate knowledge of his subject that enables him to tell us a great deal in a few words. He has thought much and read much, and his wide experience coupled with sympathy and imagination, enables him to see all sides of a question and to avoid prejudice and sentimentality.

Right at the beginning, in his chapter "On Doing Nothing" he reveals his capacity for seeing into the mind of the offender and of appreciating what arrest, the journey to the police station, the experience in the station and the subsequent suspense pending appearance in court may mean, and why in many cases the court is well advised to order absolute discharge. Mr. Mullins then goes on to discuss the various kinds of treatment and sentence at the disposal of the court. He is a firm believer in the probation system and discusses it in some detail, with special reference to suitable and unsuitable requirements and the use of the services of the psychiatrist. The importance of learning as much as possible about an offender before passing sentence is emphasized, and remands for inquiries are urged. The difficult question of the sexual offender, which is being much discussed at the present time, was very much in the mind of Mr. Mullins when he was a magistrate and he has something to say about it in this book. Generally speaking, his view is that prison is not the right place for such offenders.

As we have said, this is a small book, but it contains a great deal of wisdom and we feel sure that all who are interested in the treatment of offenders will find in it much to provide new lines of thought and to clear their minds upon many points that have worried them.

In an introduction, Viscount Templewood, a former Home Secretary, commends the book "not only because it is concentrated upon the points that matter, but because it gathers together the practical experiences of a former London magistrate, and best of all, expresses the sympathetic attitude of a very human social worker."

* Price 9*s.* 6*d.* net.

Probationer Committing Further Offence

The power of a court to deal with a probationer who commits a further offence during the period of probation, under s. 8 of the Criminal Justice Act, 1948, gives the court a wide discretion, and this is claimed to be one of the reasons for preferring the system of probation to that of suspended sentence. The court can pass any sentence which the original offence carries, or it may make a fresh probation order, or make no order at all. What it should not do, apparently, is to "take into consideration" the original offence when dealing with the further offence.

Some light on the principles to be observed is thrown by a decision of the Court of Criminal Appeal, reported in the *East Anglian Daily Times*. The appellant had been put on probation for shopbreaking, and during the probation period he committed offences of taking and driving away a car and driving while uninsured, for which offences he was sentenced to two periods of three months' imprisonment. After this he was brought before the court of quarter sessions which had made the probation order, and was there sentenced to 18 months for the original offence of shopbreaking. The Court of Criminal Appeal reduced this to a sentence which would involve almost immediate release. Byrne, J., said the Court thought the sentence too long, and pointed out that the fresh

offence was not of the same class as the one in respect of which the appellant had been put on probation.

This is a point to be observed. Clearly if a man on probation commits another offence similar to that in respect of which the order was made he is showing an apparent disregard of the order and may have to be dealt with with some measure of severity. If, however, the further offence is of a totally different kind, and perhaps in a less serious class, that fact may be regarded as some mitigation.

Appeal Against Adoption Order

Decisions of the High Court have made it clear that there must be strong grounds for dispensing with the consent of a parent who refuses to consent to the making of an adoption order, and it is also clear that a parent should be given the opportunity of giving or refusing consent if possible. Of course, there are instances in which the whereabouts of a parent cannot be ascertained after diligent inquiry and the court is justified in dispensing with consent.

In re B, an Infant (*The Times*, July 27), the Court of Appeal considered the right of a mother to appeal against an adoption order which had been made by a county court without her consent, she not having been made a party to the proceedings. It appeared that she was in Australia, and her address was known, but her consent was dispensed without her having been served with any notice of the application. The right of appeal conferred by the County Courts Act is conferred on the parties.

The Court of Appeal decided that a person who might have been a party had the right to appeal even though not made a party, and accordingly remitted the case to another county court to rehear the application. The mother would thus have an opportunity of presenting her case.

It would seem that in similar circumstances a person might appeal from the decision of a juvenile court by Case Stated if he had ground for arguing that he ought to have been made a respondent to the application but had not been served with notice. Such a person could claim to be a person aggrieved by the decision within the meaning of s. 87 of the Magistrates' Courts Act, 1952.

An Exceptional Inquiry

In connexion with the report of the Committee on Administrative Tribunals and Inquiries which we noticed briefly at p. 476, *ante*, we have seen with interest a copy of a letter sent to the city council of Manchester by direction of the Minister of Housing and Local Government. This letter relates to the council's programme for house building, and in particular to their desire to develop at least one really large area outside the city. The Minister suggests that having found their site they should apply to the local planning authority concerned for permission to develop, whereupon the Minister would call in the application for determination by himself, in pursuance of the Town and Country Planning Act, 1947, and would hold a public inquiry. What is particularly interesting, in the context of the committee's report, is the intimation that if this course was followed the inquiry would be held by a person who was not an officer of the Ministry, and that his report would be published. The Secretary of the Ministry, when giving evidence before the committee, expressed herself against the procedure now contemplated for Manchester. She took broadly the conventional line, that the person holding the inquiry is properly to be regarded as collecting information for a Minister, and that the process (which has been approved judicially) rests on the assumption that the information that person transmits will be reliable. The Minister has said that he is prepared in the Manchester case to depart from the conventional procedure, because of the controversy which for many years has been aroused by the city council's wish to build on a large scale outside the city boundaries. The Minister considers, according to his letter, that the holding of a public inquiry and publication of the report of that inquiry would make the result (whatever it turned out to be) more acceptable to other local authorities and to interested parties. We have little doubt that this view is correct, and it will be interesting to see whether its adoption heralds a more general departure from what has hitherto been the practice in the Ministry of Housing and Local Government. We have mentioned before that other departments, particularly the Ministry of Transport and Civil Aviation, have by this time acquired a good deal of experience of publishing reports received from inspectors appointed *ad hoc*, who are not officials of the Ministry.

Eccentricity in School

We have remarked from time to time upon occasional lapses reported in the newspapers, from the ordinary standard of costume which is accepted by most people on certain occasions. The topic also comes into the daily press in relation to magistrates' courts (*see* a note at p. 389, *ante*) and, just before the House of Commons rose for the recess, questions were asked about the action of a Scottish sheriff, who was said to have objected to a man's attending the court in working clothes. Perhaps more often there has been controversy in relation to school clothing. Headmasters and headmistresses or governing bodies have, in our opinion, a right to insist upon conventional clothing within reasonable limits which are almost obvious. By this we mean that it would be unreasonable to impose on parents, whose children are attending schools maintained by public authorities, requirements of clothing different from what is generally accepted as suitable in the average household in their neighbourhood. Accepting the proposition that the authorities must show common sense, we have suggested previously that otherwise the matter is simply one of prior notice. A headmistress cannot reasonably send a girl home for wearing trousers, unless the parents have been told that skirts are required at that school. The headmistress is entitled to insist that a girl shall not wear ear-rings in school, if the parents know that this is a school rule. The case reported in many newspapers in the middle of July, of the "Rock n' Roll suit," does not fall into quite the same class, because the school authorities are not likely to have foreseen that a boy of 12 would turn up in that form of gaudy clothing. Nevertheless, once the parents had been told that such suits were not acceptable, the schoolmaster could not be blamed for excluding the boy if he appeared again in the same clothes. The case does, however, seem to raise a point of law. The Education Act, 1944, requires the father to send the boy to school; it does not say that he shall send him in clothes acceptable to the headmaster. When prosecuted, the father stated, truly, that he had sent the boy to school; the magistrates nevertheless imposed a penalty. The father then said that he would continue to send the boy in the same clothes. This must encourage the boy to regard constituted authority with contempt and, from this point of view above all, the father's attitude is to be regretted, as were the earlier cases we have mentioned, of parental insistence upon trousers and jewellery. Upon the purely legal point, however, we think it can be argued that the father had done what the law requires. The law, in short, assumes that people will be sensible, and has left magistrates to guess the answer to obstinate stupidity.

THE CLEAN AIR ACT, 1956

By GRÆME FINLAY, *Barrister-at-Law*

This Act, which received the Royal Assent on July 5, 1956, was passed " to make provision for abating the pollution of air " and comprises 37 sections and four schedules. In spite of its preamble the Act does not deal with all forms of air pollution but only those which can be attributed to the discharge of smoke, dust and grit from chimneys. Matters covered include, the prohibition of " dark " smoke from chimneys, smokeless new furnaces (so far as practicable) and control of grit and dust from furnaces. Besides these the Act establishes smoke control areas, provides for the adaptation of fireplaces in private dwellings and for the abatement of smoke nuisances. A series of sections (17–22) look after the special cases (*e.g.*, railway engines, vessels, premises used for research and Crown premises), whilst s. 23 establishes a Clean Air Council in order to keep under review the progress made in relation to the pollution problem and for obtaining the requisite specialist advice. The four schedules deal with the confirmation and operation of local authority orders under s. 11 (Smoke Control Areas), Amendments of the Alkali, etc., Act, 1906, Modifications of the Public Health Acts and Repeals, respectively.

Section 1 of the Act (which is not yet in force) makes it an offence to be the occupier of a building from a chimney of which " dark smoke " is emitted. The expression " smoke " is defined as including " soot, ash, grit and gritty particles emitted in smoke " and the words " dark smoke " mean smoke which, if compared in the appropriate manner with a chart of the type known as the Ringelman Chart, would appear to be as dark as or darker than shade two on the chart (s. 34 (2)). The chart in question was devised by the French Professor Ringelman and is described in appendix V to the Report of the Committee on Air Pollution (Cmd. 9322). The expression " chimney " is also defined in s. 34. Under s. 29 of the Act it is the duty of the local authority to enforce this provision. For these purposes the local authority generally means a borough, urban or rural district council (*see* s. 29 of the Act and s. 31 (1) Public Health Act, 1936). There are special provisions covering the health district of the Port of London and the County of London. This section appears to impose absolute criminal liability and it follows, therefore, that it is not necessary for the prosecution to establish *mens rea* or guilty intention (*vide Brentnall and Cleland Ltd.* v. *L.C.C.* [1944] 2 All E.R. 552; 109 J.P. 34; and *Lindley* v. *George W. Horner & Co. Ltd.* [1950] 1 All E.R. 234; 114 J.P. 124.

It is a defence to a charge under this section that the contravention

(*a*) was solely due to the lighting up of a cold furnace subject to all practicable steps to minimize the emission;

(*b*) or was solely due to failure of a furnace or of apparatus used in connexion with a furnace subject to due precautions;

(*c*) or was solely due to the use of unsuitable fuel, suitable fuel being unobtainable and all practical steps taken to minimize the emission.

(*d*) or was due to a combination of (*a*) and/or (*b*) and/or (*c*). Besides these defences it is also open to the accused to prove that s. 30 (1) of the Act (which relates to the notification of occupiers) has not been complied with.

Section 2 of the Act (which is not yet in force) provides important temporary exemptions from s. 1 which are intended to relieve concerns which find it impracticable to instal the necessary equipment. Subsection (1) is to the following effect:

That in any proceedings for an offence under s. 1 of the Act for any contravention occurring not more than seven years from its passage (*i.e.* July 5, 1956) in relation to the chimney of a building it shall be a defence to prove:

(*a*) That the contravention was due to the nature of the building or its equipment and was not due to any failure properly to maintain the building or to maintain and use its equipment.

(*b*) That it had not been practicable to alter or equip the building so as to enable it to be used or fully used for the purpose for which it was intended without the likelihood of contraventions of s. 1.

Subsection (2) provides the *modus operandi* for local authorities. If before the seven-year period expires the local authority are satisfied that it has not been practicable to alter or equip the building so as to enable it to be fully used for its intended purposes they may issue a certificate to that effect —while a certificate of this kind is in force it is *conclusive* evidence of the facts therein stated for the purposes of s. 2 (1) (*b*), *supra*. Subsection (3) makes provision for the period during which such a certificate shall be in force and subs. (4) provides for its specific limitation to a particular chimney within the discretion of the local authority.

The use of the expression " satisfied " makes it clear that the local authority acting in good faith are to be the sole judges of the matter in question; *see Re City of Plymouth (City Centre) Declaratory Order*, 1946; *Robinson* v. *Minister of Town and Country Planning* [1947] 1 All E.R. 851; 111 J.P. 378, and *Re Beck & Pollitzers Application* [1948] 2 K.B. 339; 2nd Digest Supp. and *see* also *Thorneloe & Clarkson Ltd.* v. *Board of Trade* [1950] 2 All E.R. 245; 2nd Digest Supp. The expressions " chimney " and " industrial plant " are defined in s. 34 (1) and the word " practicable " means " reasonably practicable having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge . . ."

Section 3 of the Act (which came into force on December 31, 1956) requires that new furnaces shall so far as practicable be smokeless: " (i) Subject to the provisions of this section, no furnace shall be installed in a building or in any boiler or industrial plant attached to a building or for the time being fixed to or installed on any land unless it is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which the furnace was designed, and any person who installs a furnace in contravention of this subsection or on whose instructions a furnace is so installed shall be guilty of an offence . . ." (making him liable on summary conviction to a fine not exceeding £10, s. 27 (2)). There is a proviso saving furnaces the installation of which has been begun before the appointed day (December 31, 1956), and any furnace installed in accordance with plans and specifications approved by the local authority shall be deemed to comply with subs (1), *supra*. Notice must be given to the local authority of any intention of installing a furnace in contravention of subsection (1) but furnaces having a heating capacity of 55,000 B.Th.U. or less per hour are

exempt if designed solely or mainly for domestic purposes (subs. (4)). Furnaces of boilers in the large hotels, blocks of offices and flats are, therefore, generally outside this exemption although designed wholly or mainly for domestic purposes.

With a view to enforcing the provisions of the Act, s. 4 enables the installation of apparatus for recording the density or darkness of smoke and ministerial regulations may be made (*inter alia*) requiring any results so recorded to be made available to the local authority.

Section 5 of the Act (which is not at present in force) requires that grit and dust from furnaces shall be "minimized." The occupier shall use "any practicable means" there may be for this object and if he fails to do so he shall be guilty of an offence. Section 6 (also not yet in force) requires that new furnaces shall be fitted with plant to arrest grit and dust. They must be so fitted in accordance with plans and specifications approved by the local authority. Contravention of the section constitutes an offence punishable by a fine not exceeding £100 under s. 27 (4).

Sections 7 and 8 provide for the measurement of grit and dust emitted from furnaces and the obtaining by the local authority of information about furnaces and fuel consumed. The latter object may be secured by the local authority serving upon the occupier of the building or land concerned the appropriate notice in writing. (Section 8 (1).) Section 9 applies control to grit and dust from *outdoor* furnaces whilst the following section sees to the regulation of the height of chimneys.

Some of the most important provisions of the Act are those contained in ss. 12, 13, 14 and 15, which deal with *Smoke control areas*. Section 11, which came into force on December 31, 1956, is the principal section.

By subs. (1) thereof any local authority may, by order confirmed by the Minister, declare the whole or part of the district of the local authority to be a smoke control area. Subject to any exemptions in force the emission of smoke from the chimney of any building within a smoke control area, the occupier of that building shall be guilty of an offence (subs. (2)). It is a defence to prove that the emission of smoke was not caused by the use of any fuel other than an authorized fuel. Under subs. (3) local authorities are given a wide discretion as to their operation of smoke control orders. Schedule one to the Act applies to the confirmation and coming into operation of orders made by local authorities under s. 11. After making an order the local authority must advertise it in the *London Gazette* and in local newspapers and take certain other steps to publicize it in order to enable objections to be taken. If there are objections the Minister must order a local inquiry before he confirms the order. Provision is made by subs. (7) for relaxation or suspension of the operation of the section if it appears to the Minister "necessary or expedient." If, therefore, the Minister acts in good faith he is the sole judge of the justice of necessity or expediency. (*See Robinson* v. *Sunderland Corporation* [1899] 1 Q.B. 751; *Point of Ayr Collieries Ltd.* v. *Lloyd George* [1943] 2 All E.R. 576; and *Smith* v. *East Elloe R.D.C.* [1956] 1 All E.R. 855.

Before making a suspending or relaxing order the Minister must consult with the local authority except where urgency makes consultation impracticable.

The same kind of considerations apply to revocation of the order by the Minister. Section 12 deals with the adaptation of fireplaces in private dwellings. If an owner or occupier incurs expenditure on adaptions to bring himself in accordance with s. 11, *supra*, the local authority shall repay to him seven-tenths of that expenditure provided (*a*) that such expenditure is either incurred before the order and with the approval of the local authority or is reasonably required in connexion with a local authority notice made under subs. (2) of the section or (*b*) the adaptations are satisfactory to the local authority. There are special provisions in the section as to cooking and heating appliances installed by a person who is the occupier but not the owner of the building. Under s. 13 of the Act the Minister may contribute towards the local authorities' expenses under s. 12 (1) of the Act (*b*) in connexion with the adaptation of (not technically "new") private dwellings under their control, and (*c*) in respect of adaptations required by notices under s. 11 (2), *supra*, which are not in connexion with "new dwellings." The expressions "private dwelling" and "new dwelling" are defined in s. 34.

A code as to the abatement of smoke nuisances appears in s. 16 following that contained in part III of the Public Health Act, 1936. Smoke (excepting smoke from the chimney of a *private* dwelling or dark smoke from a building or a chimney serving the furnace of a boiler or industrial plant attached to a building), if it is a nuisance to the inhabitants of the neighbourhood, shall be deemed a statutory nuisance for the purposes of part III of the Public Health Act, 1936. Maximum fines under these provisions are £10 (for failure to comply with a nuisance order, *see* s. 94 (2) of the Public Health Act, 1936), and a further £5 for each day on which the offence continues after conviction. In the case of smoke from a chimney it is a defence for the defendant to prove that the best practicable means have been employed to prevent the nuisance.

If the local authority are satisfied that such a nuisance has occurred and although it has ceased is likely to recur they may without serving an abatement notice cause a complaint to be made to a J.P. and a magistrates' court shall have power to make an order against the person responsible prohibiting a recurrence of the nuisance and requiring the execution of any works necessary therefor. Sections 17 to 22 (inclusive) of the Act relate to special cases and deal respectively with the relation to premises controlled under the Alkali and Works Regulation Act, 1906 (s. 17), colliery spoilbanks (s. 18), railway engines (s. 19), vessels (s. 20), exemption for investigation and research (s. 21) and Crown premises (s. 22). For example, the provisions of the Alkali Act, 1909, are extended to smoke, grit and dust from premises as well as noxious or offensive gases. The section as to railway engines puts them in the same position as buildings under s. 1 of the Act and the owner of the engine is made liable instead of the occupier of the building. (This section is not yet in force.)

Section 20 includes similar extensions as to vessels "in waters to which (the) section applies." These are broadly all waters not navigable by sea-going ships and all waters so navigable but within U.K. territorial limits (*i.e.*, the three-mile limit). As regards Crown premises it is made part of the functions of a local authority to report to the Minister responsible emissions of smoke or (in certain cases) dark smoke from premises, installations or property under the control of the Crown or a Government department. Upon receiving such a report it is the mandatory duty of the Minister concerned to inquire into the circumstances and to take action to minimize, prevent or abate it.

Section 23 of the Act which came into force on December 31 last, establishes a Clean Air Council. It is the duty of the Minister to appoint this consultative body for the purposes of

(*a*) keeping under review the progress made in abating the pollution of air in England and Wales and

(*b*) obtaining the advice of specialists in regard to the prevention of air pollution.

Under s. 24 building byelaws may require the provision in new buildings of such arrangements for heating and cooking as are calculated to prevent the emission of smoke. By s. 30 the authorized officer of the local authority is placed under a duty to notify occupiers of offences. If in his opinion an offence has been committed under s. 1 or s. 11 or a nuisance exists under s. 16, he must as soon as possible notify the occupier of the premises or other relevant person and if his notification is not in writing it must be confirmed within 48 hours after he became aware of the offence.

It is important to note that in any proceedings for an offence under ss. 1 or 11 it is a defence to prove that the above provisions as to notice have not been complied with and if no notification has been given within two days from the day of the offence the subsection shall be deemed not to have been complied with unless the contrary is proved.

The expression "authorized officer" has the same meaning as given in s. 343 (1) of the Public Health Act, 1936, *i.e.*: ". . . an officer of the council authorized by them in writing, either generally or specially, to act in any matters of a specified kind, or in any specified matter: provided that the M.O.H., surveyor and sanitary inspector shall, by virtue of their appointments, be deemed to be authorized officers for the purposes of matters within their respective provinces . . ." Sanitary inspectors are now styled public health inspectors by virtue of the Sanitary Inspectors (Change of Designation) Act, 1956.

REVISION OF ELECTORAL BOUNDARIES

(*Continued from p.* 447, *ante*)

THE PUBLIC INQUIRY

In the normal case where a local inquiry is to be held, the commissioner will settle the date with the town clerk, and may make suggestions about the form of an advertisement and the extent to which advertisement is desirable, so as to secure the greatest possible publicity for the proposals. It is doubtful, to say the least, whether the procedure for an inquiry is governed by s. 290 of the Local Government Act, 1933, under subs. (2) of which there is power for the taking of evidence on oath and the production of documents. Section 290 refers to cases where any department is authorized to make or confirm any order, to frame any scheme, or give any sanction or approval, or where the Secretary of State or the Minister is authorized to hold an inquiry. Her Majesty in Council hardly comes within the description of a department and, furthermore, under s. 25 (3) it is the commissioner and not the Secretary of State who is authorized to hold the inquiry. The matter is, however, academic unless the case should arise where a commissioner desired to take evidence on oath: this is not the normal practice, and perhaps is never likely to be done.

The commissioner may have asked in advance for a professional shorthand note to be taken, but some at any rate of the commissioners never ask for this, being content to rely on their notes. (Where an inquiry is directed by the Secretary of State into proposals for changing county electoral divisions, it seems to be the practice of the Home Office to require a transcript. The decision in those cases rests with the Secretary of State; although the barristers on his panel are employed to hold inquiries, they do not sit as commissioners, and it may be that the different procedure in this matter arises from their different status.)

When the inquiry is opened the case for the council in support of their petition will usually be presented by the town clerk. Counsel may however be instructed, especially where there are political repercussions upon a contested petition.

In one county borough since the war, where the minority accused the majority of gerrymandering, counsel who put forward proposals in the council's name was not instructed by the town clerk but by a solicitor acting for the majority party, whilst the minority briefed counsel on the other side. This case was possibly unique. In at least two metropolitan boroughs in the last three years counsel has been briefed to promote the council's scheme, because of political division, but the town clerk has instructed him. (The London law is more analogous to the provincial law governing county electoral divisions, in that the barrister holding an inquiry does so on behalf of the Home Secretary, and is not a commissioner.) On the other hand, there have been several boroughs in the same period where the town clerk has himself acted as advocate for the council's scheme, even though this involved (in some cases) cross-examining a minority leader or leaders called as witnesses by counsel representing the minority. Everything depends on the local atmosphere.

Where the town clerk does present the council's case, he may if there is controversy (above all if this is political) think it wise to open his speech by emphasizing that he is speaking as the mouthpiece of the council which must, constitutionally, decide its course by a majority: that he has, therefore, no personal preference or prejudice, and that in putting questions to councillors who appear as witnesses on either side he is performing a duty which he owes to the council as a body.

The general lines of the opening statement may well be to summarize the previous developments of and in the borough; the reasons giving rise to the petition; the resolutions of the council to this effect; and the principal provisions of the petition and the statement of proposals. On conclusion of such opening statement the town clerk (or counsel) will generally call evidence. This is probably desirable even in an uncontested case; there have been some instances where a town clerk has presented the whole case, and then informed the commissioner that he will himself answer any questions, but this is undesirable unless on the most simple of petitions. The mayor or the chairman of a committee may prove the minutes or resolutions which have been referred to in the opening statement, and the same person may often be prepared to add his evidence in support as a "policy witness"—though sometimes it is preferred to call the leader of the council in this capacity, where the council is organized on strict party lines. The borough engineer or his representative may then frequently prove any plans submitted with the petition, and probably indicate any future proposals for development of the borough, perhaps referring particularly to the development plan under the Town and Country Planning Act, 1947. The borough treasurer will sometimes be called to prove the statistics of net annual (or more usually) rateable

value: and where there is substantial discrepancy in the figures between the wards he may be the best person to indicate circumstances (such as areas for shops and business premises) which result in disproportionate figures of such value in relation to electorate.

After each witness the commissioner will give an opportunity of cross-examination by opponents of the official proposals, and on conclusion of the council's case will in turn call on the objectors, who similarly, after giving evidence, will normally be open to cross-examination by the town clerk or counsel. Finally, representatives of objectors and the advocate for the council will be given the opportunity to make closing remarks. Some at least of the commissioners, when they have heard all organized opposition, make a point of inviting the views of any local government elector who is present, but has not been represented by those who have already spoken.

Subsection (4)

The scheme shall contain provisions giving such effect to the prayer contained in the petition as the commissioner may after holding any necessary local inquiry think proper and shall fix the number of councillors to be elected for each ward, and where the scheme does not provide for the holding of a fresh election of councillors the following provisions shall have effect:

(*a*) *in the case of division of a borough into wards, the existing councillors shall be apportioned among the wards;*

(*b*) *in the case of an alteration of wards, the existing councillors shall, so far as is reasonably practicable, be apportioned among the wards so as to provide for their continuing to represent as large a number as possible of their former constituents; and*

(*c*) *in either case, an existing councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.*

It will be observed from this and the preceding subsection that the scheme is one to be prepared by the commissioner. The council themselves do not actually draft the scheme, either in their petition or in the accompanying statement, although a model scheme was issued by the Home Office in 1956, and town clerks are now invited to submit proposals in a form which can, when settled, be fitted to this model. Whilst the scheme is that of the commissioner, he is confined by this subsection to keeping it within the prayer of the petition, the importance of which was referred to under subsection (1) above.

He cannot, for example, insert a provision under heading (*e*) of subs. (1), directing a fresh election, unless this has been prayed for. On the other hand, his scheme must give some effect to the prayer. The words " if any " do not occur after the words " such effect " in subs. (4), and the petition does not come into the commissioner's hands at all until Her Majesty in Council has decided that it is not one which ought to be rejected *in limine*. If the evidence produced at the inquiry convinces the commissioner that the petition is wholly ill-founded and ought not to proceed, his proper course is (it seems) to make a scheme giving effect to it, accompanying this with a report advising Her Majesty to reject it by virtue of subs. (7). Nor can the commissioner, when the prayer is for one of the " things " named in subs. (1), make a scheme purporting to " give effect " to the prayer by doing another of those " things." Thus in a case where (*b*) was prayed for, in conjunction with (*d*), for the purpose of increasing the number of wards and the number of councillors, there was strong local opposition. All parties agreed that an alteration of boundaries was overdue, and the minority on the council submitted proposals of their own for this purpose at the inquiry. They argued, however, on several grounds that the proposals of the party in power for increasing the number of wards and of councillors were not justified, and the commissioner apparently found these arguments convincing, for he informed the council that he proposed making a scheme for the same number of wards as before, but with new boundaries, and with the same number of councillors. This would have been to give effect to thing (*c*) in subs. (1) when the prayer was for thing (*b*), with (*d*) as consequential, and the Privy Council are understood to have been advised that the proposed scheme would be *ultra vires* the commissioner. At any rate, they requested him to make a scheme giving effect to both parts of the prayer under heading (*b*), with the consequential provisions under (*d*), and this was done after the commissioner had returned to the borough and asked the mayor to call an all-party meeting, at which he explained what had taken place, and stated that he did not think that a further public inquiry would add to the information in his possession.

This decision by the Privy Council does not, however, affect the scope of the commissioner's powers except where a different " thing " is substituted for one of the " things " set out in subs. (1), nothing else being done by him to give effect to the prayer. In practice the point could hardly arise except where (as in the case mentioned) the commissioner attempted to use heading (*c*) instead of (*b*), and did nothing else. Nor does it follow that the commissioner must give effect to every part of the prayer. For example, where (*b*) and (*d*) are prayed, it seems that he can include (*b*), and reject (*d*), if the number of existing councillors is enough to supply the altered number of wards, or can even alter the number of councillors whilst retaining the existing number of wards. Equally, it seems that if the council pray for alteration upward he can alter downward, if he is satisfied upon local inquiry and evidence that this is the proper course.

The scheme is to fix the number of councillors for each ward, and unless the council have prayed for a fresh election of councillors it will be desirable for them, in drafting their statement of proposals, to make their own suggestions regarding apportionment. If this can be done by ready agreement amongst the existing councillors, and no opposition is raised, the commissioner will almost certainly accept such suggestions: if suggestions for allocating councillors are not forthcoming at the outset, he may ask for them, seeing that allocation is an invidious task. If, however, the council do not submit their own proposals or if there is opposition, the commissioner will have to make his own allocation. He will have to take account first of the existing wards for which members are returned, and, where he is not able to find a solution solely from this source, he may attach importance to the residences of existing members. It will be seen from subpara. (*c*) of the subsection that the period of office of councillors is not affected by a new scheme.

Subsection (5)

The number of councillors assigned by the scheme to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as for as he deems it practicable, have regard to the number of local government electors for the ward and to the net annual value of the land in the ward as at the last preceding thirty-first day of March.

Many boroughs in the past have had wards of mixed numbers of councillors (*e.g.*, two wards represented by six

councillors each and three represented by three councillors). There is some indication nowadays on revisions of boundaries that commissioners do not look favourably upon these mixed arrangements and that they prefer schemes with six or three members (probably with preference for the latter) in each ward. It has been discussed at inquiries, for example, that when in some parts of a borough (say) 5,000 electors vote for three councillors (one retiring each year) they are not in fact having equal representation with those in another ward where perhaps 10,000 electors vote for six councillors (two each year).

It is also clear that smaller divisions in this way may be of much importance politically because, whilst a large ward may have an overall fair preponderance for one party and perhaps return six councillors of that party, it may be that division into two will result in giving one of the new wards a majority for another party, so that after revision a former majority of six may become an equality of three and three.

The "net annual value" of land referred to in the subsection is defined in s. 305 of the Act as meaning:

> "either the annual value for the time being in force for the purpose of income tax under Schedule A of the Income Tax Act, 1918, as amended by any subsequent enactment subject to any reduction made for the purpose of collection in accordance with the provision of Rule 7 of No. V of the said Schedule as so amended or, in relation to land which is not assessed under the said Schedule A, the net annual value for rating purposes as shown in the valuation list."

It is however noted in the Home Office memorandum of guidance that, where there is difficulty in obtaining the figures of net annual value, figures of rateable value will be accepted instead, and this alternative will probably more frequently be adopted.

Subsection (6)

The commissioner shall send the scheme prepared by him to the Secretary of State to be submitted to Her Majesty in Council and shall at the same time send a copy of the scheme to the town clerk.

It is believed that the commissioner will always accompany his scheme with a report to the Home Secretary, informing the latter fully of the course of the public inquiry, and setting out reasons by which he has been governed in drafting the scheme. In some cases a copy of such report has by courtesy been furnished in draft to the town clerk, but this is not obligatory, and once the report has been made it is not disclosed by the Home Office or Privy Council Office.

Almost always, he will at any rate have had occasion to consult the town clerk upon points of description which arose when he came to draft the scheme after the inquiry, or upon the allocation of councillors or returning officers, and will have let the town clerk know the extent to which his scheme will give full effect to the council's prayer. When he finds himself unable to do this, he will (unless the departures from the prayer are trivial and easily adjusted) be virtually obliged to refer the proposals back to the council indicating the lines on which he would wish a revision to be made. This may put the council in a difficult position. One alternative would be to decline to assist, and the commissioner has then the power, and indeed the duty, to draw his own scheme (within the scope of the council's prayer) and must decide either to do so or to draw a scheme *de bene esse* and advise rejection of the scheme as a whole. In one case when the council were dissatisfied with the commissioner's decision they indicated a desire to withdraw their petition and later to submit a new one confined by prayer to more limited objects. A petition (passed by the requisite majority) was accordingly presented to the Privy Council praying for the first petition to be withdrawn, and indicating that it would be proposed in due course to present a revised one. The Privy Council after (it is understood) taking certain advice, declined to allow this course to be taken, but there were unusual facts, and it cannot be assumed that the same decision would always be reached in other cases.

Sub-paragraph (7)

Her Majesty may by Order in Council approve the scheme so submitted, either with or without modifications, or may reject the scheme.

When the scheme is ultimately submitted with the commissioner's report to the Privy Council it is believed that, by and large, it is almost invariably accepted. There have been cases in recent years where the scheme not commending itself to the borough council concerned has been strenuously opposed after that stage by representations to the Home Office, but such representations have not (so far as is known) ever been successful.

It is a particularly important feature that commissioners appointed under this section are in a different position from inspectors of government departments. An inspector makes his report to the appointing Minister, and the latter's decision may or may not bear any resemblance to any recommendation made by the inspector. Under the procedure now being discussed, with a completely independent commissioner, it is the commissioner's own scheme which goes, as such, directly through the Secretary of State to the Privy Council. The Secretary of State is a Privy Councillor, and of necessity has the opportunity of offering his own comments. Commissioners have indeed been invited, since the Home Office became more active in the matter and produced a model scheme, to consult the Home Office on drafting points or any difficulties; and before the commissioner's scheme goes finally to the Privy Council, it is invariably sent to the Ordnance Survey at Southampton to have the boundaries checked in detail with the latest Survey. Once the scheme has passed this stage, and been transmitted from the Home Office to the Privy Council, any alterations by virtue of subs. (7) would be quite exceptional, and total rejection would, it is believed, practically never occur unless in consequence of a report by the commissioner himself, in such a case as is above recognized as possible, when he was constrained by subs. (4) to make a scheme which he believed to be contrary to the best interests of the borough.

It is in this respect that borough (or city) councils are in so different a position from other local authorities: because (as will be found under other provisions of the Act) any inquiries about electoral divisions in a county or urban district are conducted by inspectors appointed by, and under duty to report to, the Secretary of State with whom, and not with the person holding the inquiry, the decision rests.

Section 25 (8)

If a scheme is so approved, the council shall publish in the London Gazette and in one or more local newspapers circulating in the borough a notice stating that the scheme has been approved and that a copy thereof is open to inspection at a specified place within the borough, and the scheme shall come into operation on such date as may be specified in the Order approving the scheme.

This subsection is self-explanatory and provides the machinery for giving public notice of any revision to be brought into effect.

Subsection (9)

Any Order in Council or scheme made under this section may contain such incidental, consequential or supplemental provisions as appear to be necessary or proper for bringing the Order or scheme into operation and giving full effect thereto.

The incidental provisions to which reference is made in this subsection may often by included in the council's own statement of proposals under subs. (1).

Amongst the more common of such provisions which for any scheme of importance will nearly always require to be included are the following:

(*a*) Administrative arrangements for the election of new and retiring councillors under the scheme, such normally being fixed to take place on the ordinary date of election in the succeeding years: also provisions for order of retirement when at an election more than one councillor has to be elected for a ward, such provisions normally being similar to those contained in s. 67 of the Local Government Act, 1933.

(*b*) The number of aldermen and arrangements for the election of any new ones automatically involved by an increase in the number of councillors: such election again usually taking place at the succeeding annual meeting and the period of office of aldermen thus elected being timed henceforth to fit in with the normal time table of retirement of the council's aldermen. Existing aldermen will normally be assigned as returning officers until the next annual meeting for the new wards and it will probably be provided that the mayor (or deputy mayor) should act for any wards which are without a returning officer until such election.

(*c*) Arrangements for the town clerk and/or electoral registration officer to make any temporary adjustments or divisions of the register of electors which will be required for the forthcoming elections.

Detailed advice about provisions of this sort is given in the information now issued from the Home Office, in connexion with the model scheme.

ARTIFICIAL WATERCOURSES

By A. S. WISDOM

Artificial watercourses are of common occurrence and in the course of but a short walk one seldom fails to encounter several specimens in the shape of sewers, canals and water mains. However, these are features of statutory origin and truer examples are to be found in mill streams into which water is diverted from a natural river to operate a mill, or in goits or cuts which discharge the drainage water from a mine or underground working to a nearby stream or pond.

The law regarding watercourses which are not of natural origin, but of artificial construction, is different from the law relating to rivers and streams as such, and at one time it was considered (*per* Lord Denman in *Magor* v. *Chadwick* (1840) 11 A. & E. 568) that the law of watercourses was the same whether natural or artificial. But this proposition was corrected when Sir Montagu Smith, delivering judgment in the case of *Rameshur Pershad Singh* v. *Koonj Behari Pattuck* (1878) 4 A.C. 121, remarked that " the right to water flowing in a natural channel and the right to water flowing through an artificial watercourse do not rest on the same principles. In the former case each successive riparian owner is entitled to the unimpeded flow of water in its natural course and to its reasonable enjoyment as it passes through his land as a natural incident to his ownership. In the latter case any right to the flow of water must rest on some grant or arrangement, from or with the owners of the lands from which the water is artificially brought or on some other legal ' origin.' "

Where an artificial channel is dug by a person on his own land and the water flowing down the channel rises on his land, no questions will normally arise about the rights and liabilities of other parties, but different considerations occur if the channel runs through the property of another person. The right to discharge water by means of an artificial watercourse across another's land does not exist as a natural right of property, but may be established as an easement by grant or long-continued enjoyment or under statute ; the measure and extent of the right so acquired depending upon the terms of the deed of grant, the type of user or the provisions of the statute, as the case may be, in each case: *Sharp* v. *Waterhouse* (1857) 27 L.J.Q.B. 70 ; *Crossley* v. *Lightowler* (1867) 16 L.T. 438.

The right to an artificial channel as against the person creating it depends upon the character of the watercourse, whether it is of a permanent or temporary nature, upon the circumstances under which it was created, and the mode in which it has in fact been used and enjoyed: *Baily* v. *Clark & Morland* (1902) 86 L.T. 309.

Permanent Watercourses and Riparian Rights

If the circumstances are such that it may be concluded that a watercourse is a permanent one, then prescriptive rights can be acquired and the riparian owners are in a position to exercise riparian rights in the water.

A watercourse, though artificial, may have been originally made under such circumstances and have been so used as to give all the rights that the riparian owners would have had if it had been a natural stream: *Sutcliffe* v. *Booth* (1863) 27 J.P. 613. In *Roberts* v. *Richards* (1881) 44 L.T. 271, a watercourse which was partly natural and partly artificial, but so that nobody could tell when the artificial part was made, was deemed to be a natural watercourse, or if in part artificial to have been made so as to give all the rights of a riparian owner to the defendant and his predecessors in title. But where the origin of an artificial channel is unknown it may be possible to infer from the uses of the water and from other circumstances that the channel was originally constructed upon the condition that all the riparian owners should have the same rights as they would have had if the stream had been a natural one: *Baily* v. *Clark, supra.* The question of permanency also cropped up in *Gaved* v. *Martyn* (1865) 13 L.T. 74, which decided that a right to the flow of water along an artificial cut across another person's property cannot be acquired under the Prescription Act, 1832, unless the circumstances under which the cut was made show that it was intended to be of a permanent character.

The rights of riparian proprietors on the banks of an artificial stream were elaborated in *Wood* v. *Waud* (1849) 2 Ex. 748, in which the Court of Exchequer held that no action lay for an injury by the diversion of an artificial channel where it was obvious that the enjoyment of it depended on

temporary circumstances and was not of a permanent character, and where the interruption was by a person who stood in the nature of a grantor. The court went on to emphasize that the enjoyment for 20 years of a stream diverted or penned up by permanent embankments clearly stood on a different footing from the enjoyment of a flow of water originating in the mode of occupation or alteration of a person's property and presumably of a temporary nature and liabel to variation.

There are two further cases which throw some light on the status of riparian owners adjoining artificial streams. Where water flows through an artificial channel past the land of several owners to serve the purposes of an owner lower down, the proper grant to presume, in the absence of evidence as to the conditions upon which the channel was originally made, would be the grant of an easement or right to the running of water, and *prima facie* every landowner on the banks of the channel would be entitled to the moiety of the bed of the channel adjoining his land: *Whitmores* v. *Stanford* (1909) 99 L.T. 924. In *Nuthall* v. *Bracewell* (1866) 31 J.P. 8, where a natural stream was diverted down a goit in a lawful manner, the riparian owners in respect of the natural stream were held not to have lost their natural rights as a consequence of the water being diverted and flowing in the artificial channel.

Temporary Watercourses

If a watercourse is of a temporary character only, constructed for a temporary purpose, the owners on the banks cannot acquire any rights so as to preclude the watercourse being diverted or altered or the flow of water therein being stopped up.

In *Arkwright* v. *Gell* (1839) 5 M. & W. 203, the court decided that a stream draining a mine to a watercourse was an artificial one of a temporary character having its continuance only whilst the convenience of the mine owners required it and made with the sole object of getting rid of a nuisance to the mine. Consequently, owners of certain cotton mills situate on the banks of the stream which drained the mine had no right to compel the mine owners to continue the discharge. So also in *Burrows* v. *Lang* (1901) 84 L.T. 623, an ancient watercourse diverted from a natural stream and constructed and maintained solely for the purposes of a mill was held to be constructed for a temporary purpose and a purchaser of the mill acquired no right either by implied grant or under statute to the use of the water in the watercourse.

Following *Wood* v. *Waud, supra,* it was established in *Greatrex* v. *Hayward* (1853) 8 Ex. 291, that the flow of water for twenty years from a drain made for the purposes of agricultural improvements did not give a neighbour through whose land it flowed a right to the continuance of the flow, so as to preclude the proprietor of the land drained from altering his drains and so cutting off the supply. In accordance with these two cases, it was decided in *Bartlett* v. *Tottenham* (1932) 45 L.T. 686, that no prescriptive right could be acquired to receive water overflowing from a tank along an artificial stream which had been constructed for a temporary purpose only: *see* also *Hanna* v. *Pollock* [1900] 2 I.R. 664. In any case, a person who makes an artificial cut and so brings water to a stream which did not go there before, can *prima facie* cut it off if he chooses: *Brymbo Water Co.* v. *Lesters Lime Co.* (1894) 8 R. 329.

Pollution of Artificial Watercourses

In cases where it can be concluded that an artificial channel was made in such circumstances as to give the owners on the banks riparian rights (*vide Sutcliffe* v. *Booth* and other cases, *supra*), it appears that the riparian owners have the same remedies to prevent pollution as have the owners on the banks of a natural river.

With regard to temporary watercourses constructed for a temporary purpose, the decisions are somewhat conflicting. In *Whaley* v. *Laing* (1857) 26 L.J. Ex. 327, the court held that a mere licensee using water from a canal could maintain an action against anyone passing foul water to his premises, but *Ormerod* v. *Todmorden Mill Co.* (1883) 47 J.P. 532 (following *Stockport Waterworks Co.* v. *Potter* (1861) 26 J.P. 56) decided that a water company, not being riparian owners, taking water from a natural stream by means of conduits had no natural rights which entitled them to sue a higher riparian owner on the stream for polluting the stream whereby the water flowing through the conduits was also fouled. Finally, in *Magor* v. *Chadwick* (1840) 9 L.J.Q.B. 159, it was said that an owner on the banks of an artificial channel might bring an action to prevent the channel being polluted on the grounds that no one is entitled to discharge foul water on to another's premises in the absence of a legal right to do so: *see* also *Wood* v. *Waud, supra,* and *Ballard* v. *Tomlinson* (1885) 49 J.P. 692. As matters stand, it is probably the wiser course not to attempt to extract any guiding principles from these cases for the present.

ADDITIONS TO COMMISSIONS

CHESTER COUNTY

Mrs. Josephine Hilda Marshall Bartlett, M.A., Windsor House, Mottram Road, Stalybridge.
Edward Bebbington, 2 Tunnel Top, Preston Brook, nr. Warrington.
Harry Berry, Priory Cottage, Mottram Road, Stalybridge.
Miss Isabel Edith Burgis, The Small House, Cuddington.
Philip Percival Buxton, Kiln Hill Farm, Bosley, nr. Macclesfield.
James Peter Fairclough, 10 Windmill Lane, Appleton.
Miss Fairy Greenwood Gourlay, Oakwood Hostel, Millbrook, Stalybridge.
Fred Gregory, 15a Kingsway, Bollington.
Charles Albert Meredith, 1 West Avenue, Stalybridge.
Richardson Phillipson Tucker, Greenfields, School Lane, Mickle Trafford.
Frederick William Thomas Venables, The Nook, Sunnyside, Church Street, Ellesmere Port.
Miss Joyce Worrall, 7 Rydal Grove, Helsby.

DURHAM COUNTY

Mrs. Shirley Sefton Brittain Annand, Springwell House, Whitesmocks, Durham.
Colin Victor Armitage, 70 Junction Road, Norton, Stockton-on-Tees.
Mrs. Elizabeth Bell, Little Newsham Hall, Winston, Darlington.
Peter Leonard Blackstone, Dipwood House, Rowlands Gill.
Joseph Bratton, 4 Westbrooke Grove, West Hartlepool.
Edward Leonard Chiverton, Lumley Thicks, Fence Houses, Chester-le-Street.
George Robert Cosgrove, Dunromin, Watling Road, Bishop Auckland.
William Coulthard, Daisy Villa, Westgate in Weardale.
Mrs. Anne Pease Fry, Beda Lodge, Rowlands Gill.
Joseph Sturley Goodwin, 1 Alfred Street East, Seaham Harbour.
John Huddleston, Residential College for Adult Education, Lambton Castle, Chester-le-Street.
Mrs. Elizabeth Morgan, Glenside, Sunniside Road, Whickham.
Maurice Oliver Pease, Eldon House, Heighington, Darlington.
Thomas Pearson Simpson Prudham, 24 The Cotgarth, Felling, Gateshead 10.
Robert Colland Robinson, Alberta House, Grove Road, Tow Law.
Ernest Harry Dudley Skinner, C.B.E., Flat No. 5, Beamish Hall, Beamish.
Laurence Henry Smith, 9 Mill Lane, Billingham.
Henry Swan, Neathsdale, Dene Avenue, Rowlands Gill.
Harold Child Troldahl, Priestfield Lodge, Burnopfield.
Jack White, 24 The Fallows, Cockfield.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Morris and Pearce, L.JJ.)

MERIDEN RURAL DISTRICT COUNCIL *v.* STANDARD MOTOR CO., LTD.

PAVER (VALUATION OFFICER) *v.* STANDARD MOTOR CO., LTD.

July 11, 12, 16, 1957

Rates—De-rating—Retail repair shop—Repair of motor cars—Work done on instructions of insurers—Rating and Valuation (Apportionment) Act, 1928 (18 *and* 19 *Geo.* 5, *c.* 44), *s.* 3 (1) (*b*) (4).

CASE STATED by Lands Tribunal.

By the Rating and Valuation (Apportionment) Act, 1928, s. 3: "(1) . . . the expression industrial hereditament does not include a hereditament occupied and used as a factory or workshop if it is primarily occupied and used for the following purposes . . . ; (*b*) for the purposes of a retail shop; . . . (4) . . . 'Retail shop' includes any premises of a similar character where retail trade or business (including repair work) is carried on' . . ."

The appellants were the occupiers of a hereditament described in the valuation list as "service depot, offices, and premises" where service and repair work on cars manufactured by the appellants was carried out. About one-third of the work was non-retail work, one-third retail-work, and one-third repair work done under instructions of insurance companies. The question whether the hereditament was liable to be rated as being used primarily for the purpose of a retail shop within the meaning of s. 3 (1) (*b*) of the Act of 1928 depended on whether the latter work was retail repair work, viz., work done to cars brought or sent by their owners without the intervention of any middleman.

Held: an insurer was not so interposed between the owner of a damaged car and its repairer as to give him the position of a middleman, and therefore, the repair work was retail repair work.

Appeal dismissed.

Counsel: *Rowe, Q.C., Blain* and *Mattar* for the ratepayers; the *Solicitor-General* (*Sir Harry Hylton-Foster, Q.C.*) and *Patrick Browne* for the valuation officer; *Patrick Browne* for the local authority.

Solicitors: *Collyer-Bristow & Co.* for *Band, Hatton & Co.*, Coventry; *Solicitor of Inland Revenue; E. N. Liggins*, Coventry.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Slade and Gorman, JJ.)

R. *v.* DERBY BOROUGH CONFIRMING AUTHORITY. *Ex parte* BLACKSHAW

July 11, 1957

Licensing—Ordinary removal—Confirmation—Death of applicant after grant of removal, but before confirmation—Application by executrix for confirmation—Licensing Act, 1953 (1 *and* 2 *Eliz.* 2, *c.* 46) *s.* 25 (6).

APPLICATION for order of *mandamus*.

On February 7, 1957, Mrs. Short, who was the owner of a justices' off-licence at 62 Green Road, Derby, and the manageress of the company which owned the property, applied to the Derby borough licensing justices for an ordinary removal of the licence to 97 Normanton Road, Derby. The justices granted the application, but before the meeting of the confirming authority Mrs. Short died. On March 29, 1957, her executrix, Mrs. Blackshaw, appeared at the meeting of the confirming authority and applied for confirmation of the order of removal. The justices comprising the confirming authority said that they would have granted the application, but considered that they had no jurisdiction to do so. They did not file any affidavit setting out their reasons. After the meeting of the confirming authority Mrs. Blackshaw went to transfer sessions. Mrs. Blackshaw obtained leave to apply for an order of *mandamus* directing the confirming authority to hold a meeting and consider the application for confirmation of the order of removal.

Held: that, the licence being still in existence and an order having been made by the licensing justices that it should be removed, the confirming authority had jurisdiction to consider the application for confirmation made by the executrix, and that the position was different from that which arose where a new licence had been granted and the applicant died before confirmation, because in that case the licence had never come into existence. An order for *mandamus* must, therefore, issue.

Counsel: *Elwes, Q.C.*, and *H. G. Talbot* for the appellant. The respondents did not appear.

Solicitors: *Corbin, Greener & Cook* for *Blackhurst, Parker & Co.*, Preston.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

OWEN AND OTHERS *v.* BUCKINGHAMSHIRE COUNTY COUNCIL

July 8, 1957

Right of Way—Challenge to right of public to use way—Path running over farm land—Ploughing of land—Rights of Way Act, 1932 (22 *and* 23 *Geo.* 5, *c.* 45), *s.* 1 (6).

APPEAL from Buckinghamshire quarter sessions.

The appellants, Owen and others, applied to Buckinghamshire quarter sessions for a declaration that from November 28, 1953, there was no public right of way over certain farm land owned by them, a footpath over the land having been delineated in the map prepared by the Buckinghamshire county council under the National Parks and Access to the Countryside Act, 1939.

The land had been used as arable land and the public had been in the habit of using a path across it for a long time. In former days there was a grass walk across the field which was never ploughed up, but about 1906 there was an alteration in the method of ploughing. There was no evidence of user of the path for more than 10 years prior to 1906. Between 1906 and 1930 the whole field was ploughed and the path would disappear and re-appear. After 1930 the path was never used at all. Quarter sessions were of opinion that "the right of the public to use" the path was "brought into question" by the ploughing within the meaning of s. 1 (6) of the Rights of Way Act, 1932, and that the path had "been actually enjoyed by the public as of right and without interruption" within the meaning of s. 1 (1) for 20 years next before that date, and on that ground they refused to make the declaration sought. The appellants appealed.

Held: that the ploughing up of the footpath was not to be regarded as an unequivocal act intending to challenge the right of the public, and that the first real challenge by the public to the use of the path was put forward in the present year. The appeal must, therefore, be allowed and the case remitted to quarter sessions with a direction to make the declaration sought.

Counsel: *Hobson, Q.C.*, for the appellants; *Grieve* for the respondents.

Solicitors: *Church, Adams, Tatham & Co.*, for *Athay & Lorimer*, Buckingham; *R. E. Millard*, Aylesbury.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REVIEWS

Jennings' Law of Food and Drugs. Second Edition. By The Hon. Gerald Ponsonby. London: Charles Knight & Co., Ltd. Price 55s. net.

The first edition of this work appeared soon after the enactment of the Food and Drugs Acts, 1938. It found speedy acceptance amongst those concerned, in the administration of the law and in advising the food trades, but war time legislation and a number of amending statutes had, to some extent, put it out of date; a new edition would have been necessary, even apart from the consolidation effected by the Food and Drugs Act, 1955. The subject is one which also lends itself particularly to expansion of the law by way of statutory instruments; the language of Acts of Parliament also seems, perhaps because of the nature of the subject matter, to be unable to deal precisely with the contingencies which arise every day, and this has led to a good deal of judicial decision. A particularly valuable feature of the present edition is the learned editor's introduction, running to 43 pages, partly historical and partly expository—and enlivened by a gleam of wit. Reference back to those pages in the notes on individual sections will be found to make the relation between parts of the Act of 1955 plainer than it might otherwise be. After the introduction comes the text of the Act of 1955, annotated section by section. Here some of the notes from the first edition are still applicable, but they have been thoroughly brought up to date by

the present editor, and partly rearranged in more logical order. Section 2, for instance, upon which so many cases arise both before magistrates' courts and in our own Practical Points column, receives an exposition in the notes which seems likely to dispose of almost all foreseeable queries.

Section 3, which deals with the defences available under s. 2, is not a long section, but the provision of 19 numbered notes, as well as an introductory explanation, will surely make it much more comprehensible, both by prosecuting officials and by defending solicitors.

We understand that the publishers intend to produce a separate volume of the regulations and orders relating to the sale of food and drugs, so they are not printed in full in the present book, but of course there are complete references to them in the footnotes. The publishers have, on the other hand, included the Slaughter of Animals Act, 1933, with its amending statutes, which do not relate to the purity of the product of the slaughter-house but are normally administered by the public health inspectors who look after slaughter-houses. An incidental advantage secured, by leaving the regulations and orders out of the book, is that it is of a size which can be easily taken about, for use in court or otherwise; the practitioner who has to rely not only on the Act but on one or more statutory instruments can take these separately. There is a full apparatus of case references, giving (in accordance with the plan for which we have so often pressed) all the reports of each case. The table of statutes covers, rather surprisingly, eight pages of close print in double column. Most of this relates to the provisions consolidated by the Act of 1955, and the bulk of this table is a measure of the work which has had to be done, in explaining to the reader where a particular provision came from, in order that judicial decisions upon it in its later form may be appreciated.

The publishers are to be congratulated on having brought Sir Ivor Jennings' book up to date, and the learned editor has, so far as we can see, included everything which will be needed in daily work arising out of the Food and Drugs Act, 1955.

Notes on Matrimonial Causes Proceeding in District Registries. Fourth Edn. 1957. By Thomas S. Humphreys. The Solicitors Law Stationery Society, Limited, 21 Red Lion Street, London, W.C.1. Price 8s. 6d. net.

This fourth edition of these "Notes" sets out the important changes in procedure and alterations in Forms occasioned by the Matrimonial Causes Rules, 1957, which came into operation on April 30, 1957. These revoke and replace the Rules of 1950 as amended in 1954, 1955 and 1957, but the 1950 Rules with the 1954 and 1955 amendments will continue to apply to proceedings commenced before April 30, 1957.

In the Author's Note he calls attention to the main points to be observed under the 1957 Rules. This handy little book, brought up to date will continue its usefulness to practitioners concerned with this class of work.

Cuffs and Handcuffs (The story of Rochdale Police through the years 1252–1957). By Stanley Waller. Published by the Rochdale Watch Committee. Price 7s. 6d., postage 6d. extra.

The author, Mr. Waller, is the deputy chief constable of the Rochdale force, and he has not found it easy to collect the information necessary to enable him to present this most interesting record of police activities in Rochdale from Norman times until the present day. He deals only briefly with the very early days to show that the office of constable is one of the most ancient in the country and that the basis of our system of law enforcement was always the responsibility of each locality for the preservation of the peace and the arresting of felons within its area.

For a time, between 1839 and 1857 the Lancashire constabulary were responsible in Rochdale, but on February 28, 1857, the first chief officer of the Rochdale borough police force was appointed and since then that force has gone from strength to strength. In numbers it has increased from 19 to 178. Its cost has increased more than 100 fold. From 1878 until 1941 the police fire brigade was Rochdale's fire fighting force as well, and the removal of sick and injured persons by ambulance was also a police responsibility from 1886 to 1942. It was the police who provided Rochdale, in 1908, with the first motor fire pump in England.

This is not the place to attempt to summarize the history of the Rochdale force. Our readers will find in Mr. Waller's book a great deal of information, many interesting anecdotes and a picture of local life and activities through the years which are so presented that there is no need to seek to read the book through at one time. It can, without loss, be picked up from time to time and enjoyed in this way. In our view the eight shillings required to obtain it by post are well spent.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Before Parliament adjourned for the Summer Recess, Lord Silkin asked the Government in the House of Lords whether they could make any statement about the progress of the work of the Departmental Committee appointed to consider whether proceedings before examining justices should continue to take place in open court; and whether any restriction should be placed on the publication of reports of such proceedings.

The Lord Chancellor, Viscount Kilmuir, replied that the Home Secretary announced the membership and terms of reference of that Committee, which was under the chairmanship of Lord Tucker, on June 4 last; and he had asked the Committee to complete its work with the minimum of delay. The Committee, which held its first meeting on June 25, had invited certain bodies and persons to submit evidence, and he understood that it would be glad to receive memoranda of evidence from any others who might be in a position to help it. Evidence should be sent to the Secretary, Mr. B. C. Cubbon, Home Office, Whitehall, as soon as possible, and in any case not later than October 1 next.

CRIMINAL APPEAL ACT

In the Commons, Mr. Montgomery Hyde (Belfast, N.) was given leave, under the Ten-Minute Rule, to introduce a Bill to provide "for leave to appeal to the House of Lords in criminal matters being determined without a certificate of the Attorney-General."

Mr. Hyde said that the Bill would put appeals from the Court of Criminal Appeal to the House of Lords on the same footing as appeals in civil matters in this country and appeals in criminal matters from the colonial courts to the Judicial Committee of the Privy Council.

PROSTITUTION

Mr. N. Pannell (Kirkdale) asked the Secretary of State for the Home Department the number of convictions for living on immoral earnings in the United Kingdom, involving aliens, for the period 1951 to 1956; and what was the number of deportations of such offenders.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that during the period mentioned 12 such cases were reported to the Home Office. One of the offenders (against

whom a deportation order had already been made) left the country voluntarily and four others were deported. Of the remaining seven aliens involved, two were stateless and not deportable; and in a third case it had not yet been possible to secure the alien's recognition by the country of his presumed nationality. In the four remaining cases it was decided on compassionate grounds that deportation should not be proceeded with.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FAILURE TO EXPLAIN EFFECT OF PROBATION ORDER

I was interested to see the note under this heading at p. 404, *ante*. One of my courts is the supervising court in respect of the probation order made in this case by the Court of Assize at Chester on February 6, 1956.

As a result of the decision of Oliver, J., at the last Chester Assize which you refer to in your note, you may be interested to know that I wrote to the Clerk of Assize, Mr. John Morgan, at Cardiff, and asked for the view of the Court of Assize in regard to this probation order. I asked specifically whether in view of the Judge's finding that s. 3 (5) of the Criminal Justice Act, 1948, had not been complied with, it was the view of his court that the probation order was invalid and that the defendant was no longer to be treated as being on probation. I pointed out that if the order was not to be regarded as invalid, it would appear that difficulties were likely to arise as a result of the learned Judge's decision since any breach of the order could apparently not be dealt with. As I had been informed that the Judge gave his decision after a perusal of the transcript of the judgment delivered when the accused was placed on probation, I drew the Clerk of Assize's attention to the fact that the probation order contained the normal recital to the effect that s. 3 (5) of the 1948 Act had been complied with.

I have now received a reply from the Clerk of Assize to the effect that the learned Judge had before him at Chester Summer Assize, 1957, a transcript of the judgment delivered when the accused was placed under probation and, that in the circumstances no action should be taken under the order in respect of any offence committed up to and including February 7, 1959.

February 7, 1959, is of course the date when the order is due to expire as it was a three year order.

Yours faithfully,
E. L. BRADLEY.

Justices' Clerk's Office,
20 Grosvenor Road,
Wrexham, Denbighshire.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

BINDING OVER WITNESSES CONDITIONALLY

In view of your comments in the issue of July 13, under the above heading, and to the fact that a similar announcement was made over the B.B.C. West Regional Service, I think perhaps I should point out that the second case referred to was not a committal from my court, my justices are fully aware of the value of conditional bindings where appropriate and do not hesitate to make use of same.

The police officer "travelled from Devizes" by reason of the fact that police headquarters are in this town and specialized officers operate from there.

Yours faithfully,
A. HODGE,
Clerk to the Justices.

Justices' Clerk's Office,
Devizes.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

BINDING OVER WITNESSES CONDITIONALLY

Reference your article at p. 441, *ante*, on the above-mentioned subject, it might interest your readers to know that the police officer concerned from Falmouth, in the case before Streatfeild, J., at the last Bristol Assize, was bound over conditionally by the examining magistrate. He was served with notice requiring his attendance at the request of the solicitors engaged by the chief constable in the matter. The exact procedure as outlined in your article had been followed.

Unfortunately, the justices' clerk is never, or rarely, at the Assize, and such observations by the Judges, recorders and chairmen of quarter sessions are sometimes made without their being made aware of the accurate circumstances. The examining magistrate and his clerk then receive criticism, in the belief that facts which are not so exist, and that the proper procedure has not been followed. Certainly in this case this was not so and it was the sole responsibility of one of the parties that the officer was called. There was no fault on the part of the examining magistrate or myself in this matter.

Yours faithfully,
JOCELYN V. RATCLIFFE,
Clerk to the Justices.

Justices' Clerk's Office,
Barclays Bank Chambers,
Falmouth.

MISCELLANEOUS INFORMATION

PERFORMING RIGHT TRIBUNAL

The Performing Right Tribunal, which was set up under s. 23 of the Copyright Act, 1956, have taken occupation of the premises allotted to them at Someries House, Regents Park, London, N.W.1. The telephone number is Welbeck 1358–9.

The function of the tribunal is to determine disputes arising between licensing bodies and persons requiring licences to perform in public or to broadcast copyright works. It also has jurisdiction in the case of the public performance and broadcasting of records and the public performance of television broadcasts.

Communications for the tribunal should be addressed to the secretary.

IONISING RADIATIONS IN INDUSTRY

Mr. Iain Macleod, Minister of Labour and National Service, has published the preliminary draft of a new Code of Regulations,* to safeguard workers employed in industry against the effect of ionising radiations.

This is the first attempt to make regulations in a new and highly specialized field. The object of publishing the regulations (Factories (Ionising Radiations) Special Regulations) in draft form is to give the various organizations and others concerned an opportunity of considering them and to raise any points they may have with the Ministry. After these have been considered a further draft will be prepared and laid before Parliament.

Representations should reach the Ministry by October 31, 1957, and should be addressed to the Secretary, Ministry of Labour and National Service, 19 St. James's Square, London, S.W.1.

*Factories (Ionising Radiations) Special Regulations. Preliminary Draft of Regulations.

THE SOLICITORS ACTS

The Solicitors Act (Commencement Order, 1957 (S.I. No. 1194 (C. 10)) dated July 5, prescribes July 14 as the date of commencement of s. 2 of the Solicitors (Amendment) Act, 1956, and July 15 as the date of commencement of the Solicitors Act, 1957.

ADMINISTRATION OF JUSTICE ACT, 1956

The Administration of Justice Act, 1956 (Commencement) Order, 1957 (S.I. 1179 (C. 9)) fixes October 1, 1957, as the date of commencement of s. 15 of the Administration of Justice Act, 1956, which is the only provision of that Act not in force.

EX-SERVICES *MENTAL* WELFARE SOCIETY

Ex-Services *Mental* Welfare Society is the new name of the Ex-Services Welfare Society which was founded in 1919 to help all ex-members of Her Majesty's Forces and the Merchant Navy suffering from war psychoses and neuroses.

Commenting on the change of name, Commander F. W. Lipscomb, O.B.E., R.N., of the society, said: "The council of the society has decided on this change of name because of the more enlightened trend of public opinion. We want the public to know exactly what role we play in assisting the war disabled. This role covers both mental and nervous breakdown but for simplicity only the word 'mental' was added to the title."

POLES APART

In the long-ago days when we endeavoured—vainly, as it turned out—to master the esoteric rules of Contract Bridge, we were much struck by the respect paid to etiquette and protocol. Bridge, it seemed, had much in common with the British Constitution, in that the strict rules of law had to be supplemented by conventions which were well understood by everybody—except ourself. Joining one day in a rubber where we were partnered by a friend whose ignorance of the game was almost as abysmal as our own, and both resenting the tone of superiority adopted by our knowledgable opponents, we two evolved a convention of our own. One of us, as soon as the hands were dealt, examined his cards; and if (as frequently occurred) they comprised a variety of suits with values between two and eight, without a single honour in sight, he shouted " Misdeal ! " which was the conventional signal for his partner to fling his own hand, face upwards, on the table. This innovation—for as such our opponents persisted in stigmatizing it—found little favour among serious exponents of the game; there were, we were told severely, conventions *and* conventions—a subtlety of distinction which made little appeal to our inexperience and gave us no inducement to remedy the same.

As with Bridge, so with Chess—a game of ancient lineage which has been attributed by some authorities to the Ancient Egyptians, by others to the Persians or Hindus. Its main principles appear to have been settled as long ago as the Third Century of our Era, when one of the prevailing religions in India was Buddhism. According to this cult the taking of human life, for any purpose and from any motive, was criminal; killing was always identical with murder, and Chess was therefore invented as a substitute for war. Despite this long ancestry, it seems from the authorities that the conventions of the game have varied from age to age, and from nation to nation; the Queen, in particular, has undergone curious changes in name, sex and power. Originally known (in Persian) as *firz* or " counsellor," she could move only from one square diagonally to the next; it was not until the fifteenth century that she attained the immense power that is now hers by right. But there are still, it seems, variations on the continent of Europe, by way of etiquette or convention, disregard of which may have grave consequences.

How grave these may be is indicated by a recent case before the stipendiary magistrate at North London Court. Two Polish Chess-enthusiasts, Alexander Piotrowski and Kazimieriz Osiecki, were summoned before him—the former on a charge of causing actual bodily harm; the latter accused of assault. Their exotic names, difficult of pronunciation by English tongues, led to their being described throughout the proceedings as " P. and O."

The two accused had been friendly opponents at Chess " 500 or 700 times." On this particular occasion they were playing in their garden, lying on the lawn with the board between them. O., in the witness box, stated that during the third game he moved his Queen. On his next move he took P.'s Queen. At this point in the evidence the learned Stipendiary (obviously a devotee of the game) remarked that this was, to some extent, a breach of etiquette—" at least on the Continent. If the Queen is threatened, you say 'Guard !'" O. explained that he neglected this courtesy " because he thought they could ' exchange ' Queens." Thereupon followed certain moves which are recognized neither by convention nor etiquette, and certainly not by the laws and rules of the game.

According to O.'s version, P. jumped up, insulted him, kicked him in the chest and began to hit him with a push-chair, which lay conveniently at hand. P.'s evidence was that O. had " put the Queen on the wrong square, like a horse " (presumably a Knight's move). " I told him Queens don't jump like that." After some exchange of recrimination, O. then picked up the chessboard and threw it at P.'s face. P. threw it back, and a general *mêlée* ensued, which led both to the local hospital. O. was treated for bruises, scratches and a broken rib, and P. for pains in the abdomen.

The magistrate decided that he could not hold that either man began the fight, and dismissed both charges. " As far as I know," he said, " this is the first time, in the 2,000 years that Chess has been played, that it has resulted in both participants having to go to hospital."

We must respectfully dissent from the implications of this remark, for there is more than one historical precedent. In the middle of the eighth century, after a game of Chess between the son of the Carolingian Pépin, King of the Franks, and the son of Prince Otkar of Bavaria, a quarrel arose, and the Bavarian Prince was killed by a blow on the temple struck by his opponent with the chessboard. In England, soon after the Danish Conquest, it is recorded that King Canute was playing at Chess with Earl Ulf, when the latter, in consequence of a dispute, upset the chessboard, with the further result that he was murdered in church, a few days later, by Canute's orders. And in the fourteenth century John Huss, the religious reformer of Bohemia, writing in prison, deplored the time he had wasted playing Chess, " whereby he had run the risk of being subject to violent passions." Evidently there is more in the game than meets the eye.

There is an interesting legal analogy on the learned magistrate's reference to the " breach of etiquette " committed by O. In *R.* v. *Bradshaw* (1878) 14 Cox, 83, the accused was indicted for the manslaughter of one Dockerty while playing football at Ashby-de-la-Zouch. The accused, by way of charging Dockerty (who had the ball at his feet), jumped in the air and struck him with his knee in the stomach. He died next day.

Bramwell, L.J., summing up to the jury, told them that the only question they had to decide was whether the death was caused by any unlawful act of the accused. He warned the jury that " no rules or practice of any game could make that lawful which is unlawful by the law of the land." He concluded his address by pointing out that " the game was, in any circumstances, a rough one; but he was unwilling to decry the manly sports of this country, all of which were no doubt attended with more or less danger." (The jury acquitted the accused.) It would appear that the concluding remarks of Bramwell, L.J., are now no more closely applicable to football, polo and steeplechasing than to Chess—and possibly Bridge.

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, July 30

PESTS ACT, 1954 (AMENDMENT) BILL—read 1a.
FINANCE BILL—read 2a.

HOUSE OF COMMONS

Wednesday, July 31

NATIONAL HEALTH SERVICE (AMENDMENT) (NO. 2) BILL—read 1a.
CRIMINAL APPEAL ACT, 1907 (AMENDMENT)—read 1a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Prevention of Crimes Act*, 1871, *s.* 13—*Old metal dealer.*

Situated in another division of this force is a scrap dealer who is registered with a local authority under the Public Health Acts. He is the owner of several motor lorries and it is his practice to supply a lorry to an associate whom I would term a "collector." The "collector" receives no wages from the scrap dealer and the only condition attached to the use of the vehicle is that all scrap which the "collector" either purchases or acquires is sold to the scrap dealer. In other words, the "collector" pays for the scrap he collects and sells this to the dealer.

On April 6, 1957, the scrap "collector" was stopped by the police in this area and amongst a load of mixed scrap metal, the police officer found 18½ *lbs.* of brass. The scrap "collector" was asked from where he had obtained this metal and the "collector" said, "It's what I've picked up here and there." It was pointed out to him that he had acquired less brass than the stipulated weight and he stated, "I'm a scrap metal collector. I'm not a registered dealer. When I've got 56 *lbs.* or more I'll sell it into the stores," (that of the registered scrap dealer).

In my view, the scrap "collector" is a dealer as defined in the Prevention of Crime Act, 1871 and I am considering instituting proceedings against him for a breach of s. 13 of that Act.

I would be pleased to have your views on this matter in due course. GAMAGA.

Answer.

We think that the collector in this case comes within the definition in s. 13 of the Act, as he is "a person dealing in, buying and selling scrap metal."

2.—Gaming—*Small Lotteries and Gaming Act*, 1956—*Chamber of Trade and Commerce applying for registration.*

The local Chamber of Trade and Commerce are contemplating organizing a sweepstake for the purpose of using the proceeds thereof to publicize the town.

As a result they have made application to the council for registration under the Small Lotteries and Gaming Act, 1956. In my view the Chamber is not established and conducted wholly or mainly for one or more of the purposes set out in the above Act, and cannot therefore obtain the benefits of such Act which will permit of them running a sweepstake for the purpose proposed.

I shall be glad to have your valued opinion upon this point. FEXOM.

Answer.

We tend to agree with our correspondent's view that a chamber of commerce is not a society established and conducted wholly or mainly for one or more of the purposes specified in the Act, although it might be argued that they come under s. 1 (1) (*c*). We would add, as we have said before on similar queries, that no definite answer can be given until the matter has been tested in the High Court.

3.—Husband and Wife—*Applications to vary terms of suspended committal order for arrears.*

B was brought before the justices for arrears due to his wife under an order of maintenance. The justices committed B to prison but ordered that the committal be suspended so long as B paid so much weekly off the arrears. B failed to make certain payments whereupon the wife asked that the committal warrant should go forward. By reason of correspondence B knew that the warrant was in the hands of the police and before the execution thereof he consulted his solicitor who in turn informed the clerk to the justices that B desired to make application to the justices to vary the terms of the committal, contending that the justices have an inherent right to hear such an application.

I can find no authority for this contention and should be glad of your views thereon. F. TENAX.

Answer.

There is no authority for such an application, but there are circumstances in which such an application could be entertained, *e.g.*, if the man's financial position had materially altered since the order was made. If such an application is heard, we think it essential that it should be heard by substantially the same bench as that which made the order in the first place, otherwise it would be tantamount to appealing to one bench against the decision of another.

4.—Licensing—*General order of exemption—Form of order—Whether conditions may be attached to order.*

The holder of a justices' licence of "Catering Inn," "Agritown," already holds a general order of exemption in connexion with: "all days on which a public market is held at 'Agritown' (except on Sundays, Christmas Day and Good Friday) between the hours of 10 *a.m.* and 10 *p.m.* from April 5, 19 , to April 5, 19 , in order that the applicant may be able to sell and supply intoxicating liquors on the said premises."

The general market for "Agritown" is held each Tuesday and other licensees in the town hold similar general orders of exemption.

In addition to the general market, a cattle mart is held each Monday.

The above-mentioned licensee is intending to apply for a general order of exemption for each Monday between the hours of 2.30 *p.m.* and 4 *p.m.* to enable him to sell intoxicating liquors to persons who have attended the cattle mart and come in for a late meal at which they require intoxicating liquid refreshment. The licensee's customers arrive for their late lunch just after normal closing time, namely 2.30 *p.m.*

I shall be glad to have your valued opinion on the following points:

(*a*) Does the general order of exemption already held by this licensee automatically cover him for the cattle marts?

(*b*) If not, and the justices entertain an application for a general order of exemption for the cattle mart, are the justices empowered to insert a condition in their order restricting the sale of intoxicating liquors to persons attending the cattle mart and partaking of a meal and to be served only in the dining room with the meal and that otherwise the public bar is closed? N. CLERICUS.

Answer.

The difficulty here seems to have arisen either because there is a doubt whether the so-called "cattle marts" are "public markets," or because, when the general order of exemption was granted, it was in contemplation of general markets on Tuesdays and there was not then an intention that it should also operate in respect of cattle marts on Mondays. Both days should be included in the same order which should be drafted in such terms as to be free from ambiguity (*see Hopkins* v. *Jotcham* (1941) 105 J.P. 22). Section 106 (1) of the Licensing Act, 1953, requires that the enlarged permitted hours must be specified in the order, and s. 106 (3), although it is worded in such a way that it appears to be discretionary, should, in our opinion, be construed as a statutory recommendation that the days on which the order is designed to operate should also be specified. There is no power to attach conditions to a general order of exemption.

We recommend that application now to be made for a general order of exemption shall be for a single order relating to Monday of each week from 2.30 *p.m.* until 4 *p.m.* and for Tuesday of each week from 10 *a.m.* until 10 *p.m.* "for the accommodation of persons attending public markets."

5.—Licensing—*Registered club—Employment of person under 18 years in bar.*

The steward of a local working men's club has made application to his committee to be allowed to employ his 15 year old son upon the club premises. Apparently, the purpose is that the boy should work, under the supervision of his father, to gain experience in all aspects of the trade, with a probable view of himself becoming a club steward in later years.

I note that by s. 127 of the Licensing Act, 1953, there is a prohibition to any person under 18 years being employed in any bar of licensed premises at a time when the bar is open for the sale or consumption of intoxicating liquor, and the Occasional Licences and Young Persons Act, 1956, has extended this to apply to the holders of occasional licences.

There is some doubt whether the section applies to registered clubs, they not being the holder of a justices' licence. In my opinion, the term "licensed premises" in s. 127 does not apply to registered clubs and I think, therefore, the boy may be employed. NURBIFF.

Answer.

There is no law prohibiting the employment of a person under 18 years of age in any part of a registered club.

We agree with our correspondent's interpretation of the law in this matter.

6.—Magistrates—*Jurisdiction and powers—Adjoining petty sessional divisions in same county—Offence committed very near the boundary between them—Venue.*

As a clerk to a river board I am often required to institute proceedings for offences under the Salmon and Freshwater Fisheries Acts and byelaws made thereunder. Sometimes the offence is committed on the bank of a river which forms the boundary between two petty sessional divisions and although the bank from which the offence was committed is in division X, it may be more convenient to the prosecution—perhaps because it enables a number of cases to be taken together, or perhaps because of the location of the court house—to take the proceedings in division Y, being the division on the other side of the river. If the divisions are in different "local jurisdictions," as defined in s. 3 of the Magistrates' Courts Act, 1952, I may exercise what seems to be the prosecution's option under the section and take the proceedings in division Y; the exercise of such an option has not in my experience ever been questioned either by the justices' clerk or the justices. If on the other hand the river is the boundary between two petty sessional divisions within the *same* county jurisdiction, there seems no corresponding provision to which the prosecution can point as giving them a choice of courts. It is true that, in such a case, the magistrates' court for division Y has jurisdiction to try the offence, even though it may have been committed in division X on the other side of the river but in the same county (s. 2 of the Act of 1952); but if the clerk of the Y justices advises the justices to refuse to accept the information on the grounds that it ought to be laid in the court for division X, the prosecution do not seem to have any right to proceed in the court of their choice. I shall welcome your opinion.

J. PISCATOR.

Answer.

The justices at Y certainly have jurisdiction to try these cases, but it is unusual to take a case outside the petty sessions area in which the offence is committed. Unless the justices at X have for some good reason stated that they think the cases ought to be tried at Y, or there are other compelling reasons why, in the interests of justice, that should be done, we do not think there could be any ground for seeking to compel the Y justices to take these cases.

On the other hand if the relative positions of the two court houses are such that it is very much more convenient for the prosecution and the witnesses to attend at Y, and if this would not be to the prejudice of the defendants, it seems that the Y justices might well agree to take the cases if they can conveniently do so.

7.—Mental Deficiency Act, 1913—*Power of local health authority to contribute towards the expenses of guardianship.*

Please refer to s. 30 (*d*) and (*e*) of the Mental Deficiency Act, 1913, and to the definition of "guardian" in s. 71 of the Act. Under the Act there can be in respect of a defective a statutory guardian by order under s. 6 (3) of the Act. The question asked is whether under s. 30 (*e*) the local health authority may contribute towards the expenses of looking after a defective, in respect of whom no formal guardian has been appointed under s. 6 (3) but who has a brother (the parents being deceased) who looks after the defective in the brother's home.

ANNIE BUNN.

Answer.

We think the word "guardianship" in s. 30 (*d*) and (*e*) must be related to placing under guardianship, in accordance with part I of the Act. We gather that in this case there has been no such judicial act, and accordingly s. 30 does not in our opinion apply.

8.—New Streets Act, 1951, s. 2 (1) and (3)—*Private development—Notice under s.* 2—*Substituting smaller sum relying on subs.* (3).

A local authority are anxious to encourage private development and propose to interpret subs. (3) of s. 2 of the New Streets Act, 1951, to mean that a purely nominal sum, say one *per cent.* of the original sum, may be substituted by means of a notice served under the subsection for the sum specified in the notice served under subs. (1) of the section.

My view is that the smaller sum can only be substituted if for any reason the estimated cost of the works necessary to satisfy the requirements of subs. (2) of s. 2 has been reduced, and this view appears to be supported by para. (2) of circular No. 56/53 of the Ministry of Housing and Local Government which reads: "Where a builder, after paying or securing the charges required by the Act, carries out work in the road which may be expected to reduce the ultimate cost of making up (for example, the provision of a satisfactory foundation or sewers), it may be reasonable for the local authority to take account of the value of the work done from time to time and to refund part of the charges accordingly. Section 2 (3) of the Act enables the local authority to serve a further notice substituting a smaller sum, and the Minister is advised that such a notice can be served at any time."

Your valued opinion will be appreciated.

P. DOMER.

Answer.

We agree that if a sum can be substituted it must be a genuine amount within the terms of s. 2 (1) of the Act. We disagree, however, with the advice given to the Minister that the further notice can be served at any time.

9.—Public Health Act, 1936—*Drainage of premises—Surface water—Sewer beyond* 100 *ft.*

A private right of way runs at the rear of shop properties in this area and, owing to a "dish" in the ground, surface water is apt to collect and occasion flooding at the rear of one of the properties. The owner of the premises now seeks my council's consent to lay a surface water conduit from this area of flooding to connect up with a foul sewer in the near vicinity, to which proposition it appears that my council must assent in the absence of a surface water sewer in the near vicinity: s. 34 of the Public Health Act, 1936. My council are nevertheless averse from the proposed connexion which would give rise to a possibility of the foul sewer's being overloaded. A surface water sewer exists some 100 *yds.* away, but it would be a comparatively costly alternative to adopt and one which it would be unreasonable to expect the shop owner to bear.

To the extent that, if the alternative were adopted of a conduit connecting with the surface water sewer, it would only be a measure benefitting a private right of way and one property, I am in some doubt as to the legal power of my council to incur the cost of providing this connecting surface water conduit, should they feel so disposed to do in preference to the connexion to the foul sewer by the property owner. Could the council properly bear the cost of provision of a surface water conduit from the area of flooding to the existing surface water sewer?

P. MIRROR.

Answer.

Essentially this is a proposal to drain land, not a building, but we notice that flooding occurs at the rear of one of the properties, and it may not be straining s. 39 of the Public Health Act, 1936, to say that satisfactory provision ought to be made for drainage, "in the case of" a building. On this view, the council can use s. 39 (2), applying s. 37 (3) and (4) of that Act.

10.—Public Health Act, 1906, s. 13—*Land charge or local land charge.*

At 120 J.P.N. 731, a query appeared which assumed that a local authority's determination of the proportions in which expenses were to be paid under s. 38 (2) of the Public Health Act, 1936, created a land charge. The query went on to suggest that the charge was registrable in class C (iii) at the Land Registry. The answer given agreed with this suggestion, and by inference with the underlying assumption. Upon this three points arise. First, s. 291 of the Act makes the determination by the local authority a local land charge in so far as the apportionment is in favour of themselves, but a local land charge is distinct from a class C charge. Secondly, when the determination is in favour of a private owner or owners, have the local authority any *locus standi* to procure its registration even if it is a land charge? Thirdly, is it really a land charge which could be registered even by one private person against the land of another? It seems in this respect to stand on a different footing from a charge in favour of the local authority, in that it is not stated by the Act to be any sort of land charge where a private person is the beneficiary; *i.e.*, it is merely a sum of money recoverable from the person who is owner of the land at the time. The East Midland Branch of the Society of Town Clerks have considered the matter this year, and reached the conclusion just stated. ANORA.

Answer.

The query put to us last November assumed that there was a land charge registrable under part V; this assumption accorded with a note in *Lumley* which has stood since the Public Health Act, 1936, under different editors. For purposes of answering the query, we dealt only with the class within part V, which was what we were asked, and did not feel called upon to go behind the querist's primary assumption. Taking the first point now put to us, it is true that s. 291 of the Public Health Act, 1936, makes

the apportionment into a local land charge where it is in favour of the local authority, but this does not mean that it cannot also be a land charge under part V; s. 21 of the Act of 1925 says that a local land charge need not be registered under part V, not that it shall not be so registered: see *Lumley's* note on s. 21.

Nor, coming to the second point now raised, do we see anything to prevent a local authority from registering a charge in favour of a private owner, where some action on their part has created such a charge. It was presumably upon this view that *Lumley's* note to s. 38 of the Act of 1936 was written.

A more fundamental point is made in the last paragraph of the present query, *viz.*, that the charge, except so far as s. 291 of the Act applies to it, is not a land charge at all. Upon further consideration of this point, despite *Lumley's* note, we agree with your opinion.

11.—Rating and Valuation—*Joint occupiers—Committal in default of distress.*

A and B are jointly assessed in respect of payment of general rate on certain property of which they are joint owners and were summoned in respect of non-payment of the total amount due. Distress warrants were issued against each of them and the warrants were returned in each case with an endorsement to the effect that there were not sufficient goods to satisfy the amount owing. A and B have now been summoned to show cause why they should not be committed to prison in default of payment, and the question arises whether (on proof of means to pay in each case) the court would have power to commit both A and B to prison and for what term, or whether the warrant of commitment should issue against such one as the court decides. A has offered to pay half of the total amount due, on condition that no further proceedings are instituted against him in this respect, but the rating authority have refused to accept this amount. Your opinion and comments on the position would be much appreciated. ASSESSOR.

Answer.

Each of the joint occupiers is liable for the whole of the rate: *R.* v. *Paynter* (1847) 13 J.P. 457. It follows in our opinion that the rating authority are entitled to a warrant of distress upon each for the whole, and in default of sufficient distress to warrants of committal against either or both, subject to s. 10 of the Money Payments (Justices' Procedure) Act, 1935. There seems no reason why A should get off with paying half, when he may be able to pay more, or why B should get off whatever he can pay.

12.—Road Traffic Acts—*Cyclists—Drunken cyclist who is not riding his cycle is not within s.* 11 *of the* 1956 *Act.*

I was interested to read your contributor's comments under the heading "A Drunken Cyclist," at p. 171, *ante*.

After saying that "The penalty under s. 12 of the Licensing Act on conviction of the offence of being drunk in a highway or other public place in charge of any carriage is a fine not exceeding 40*s.*, or imprisonment not exceeding one month," your contributor went on to say "but the drunken cyclist must now be dealt with by virtue of s. 11 (1) (*c*) of the Road Traffic Act, 1956, under s. 15 of the Road Traffic Act, 1930," etc. I am of the view that only a cyclist who is actually riding his bicycle falls to be dealt with under s. 15 of the 1930 Act, and that the cyclist who is pushing his bicycle or, as is most usually the position in these cases, is vainly trying to mount his bicycle, must still be dealt with under the 1872 Act, as the provision for dealing with persons "in charge" of vehicles has now been removed from s. 15 of the 1930 Act, and is dealt with under s. 9 of the 1956 Act, which is confined to *motor* vehicles.

I should be glad to know whether you agree with this, or whether I have missed some other provision. INAN.

Answer.

We agree. It would have been more complete if, in the Note of the Week referred to, we had said (as we meant), "but the drunken cyclist *riding his cycle* must now be dealt with," etc.

13.—Road Traffic Acts—*Lighting offences—Reference in summons to "Road Traffic Lighting Acts,* 1927 *and* 1953 *"—Defect in form.*

A defendant has been served with a summons charging him that he "on the 7th day of December, 1956, at the parish of B, in the county of C did cause a motor vehicle, namely a motor car to be on a certain road called —— during the hours of darkness at 5.45 *p.m.* in contravention of the provisions of the Road Transport Lighting Act, 1927 (as amended) in that the said vehicle did not carry two lamps showing to the front a white light and two lamps each showing to the rear a red light visible from a reasonable distance and kept properly trimmed lighted and in efficient condition and attached to the said vehicle in accordance with the Road Vehicles Lighting Regulations, 1954. Contrary to ss. 1 and 10 of the Road Traffic Lighting Act, 1927, as amended by the Road Traffic Lighting Act, 1953." A point has been raised by the defence that since there is no such Act as the Road Traffic Lighting Act, 1927, or 1953, the summons discloses no offence and should therefore be dismissed. The matter has been adjourned and it is anticipated that the police may ask for leave to amend.

Can it be said on the authority of *Simmonds* v. *Fowler* (1950) 48 L.G.R. 623 and also having regard to the change in the wording of s. 32 of the Criminal Justice Act, 1925, as reproduced in the Magistrates' Courts Rules, r. 77, that the summons should be dismissed and amendment should not be permitted?

Also, would the case be covered by s. 100 of the Magistrates' Courts Act, 1952? JITHER.

Answer.

In our view the description, in one part of the summons, of the Acts as the Road *Traffic* instead of the Road *Transport* Lighting Acts is a defect in form and s. 100 (*supra*) applies. The prosecution should be allowed to make the necessary amendments.

14.—Town and Country Planning—*Advertisement—Offence—Whether enforcement notice required.*

An owner-occupier begins displaying an advertisement on his property without having obtained the consent of the local planning authority. Can the local planning authority institute proceedings under s. 32 of the Town and Country Planning Act, 1947, without serving an enforcement notice? ESWAR.

Answer.

Upon the facts as we suppose them to be, we think proceedings can begin without an enforcement notice.